

4:15 CV 3062

U. S. DISTRICT COURT
FILED
DISTRICT OF NEBRASKA
2015 JUN -4 PM 12:31

FORM A To be used by a prisoner filing a complaint under the Civil Rights Act, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Brandon Lee Capek

(Enter above the full name of the plaintiff or plaintiffs in this action.)

v.

COMPLAINT

Samuel Grove

State of Nebraska

(Enter above the full name of the defendant or defendants in this action, if known.)

(Note: If there is more than one plaintiff, a separate sheet should be attached giving the information in Parts I, II, and III for each plaintiff, by name. Remember, all plaintiffs must sign the complaint.)

I. A. Place of Present Confinement Nebraska State Penitentiary

B. Parties to this civil action:

Please give your commitment name and any other name(s) you have used while incarcerated.

(1) Plaintiff Brandon Lee Capek Registr. No. Don't Know
 Address Po Box 2500 Lincoln Ne 68542

Additional plaintiff's Registr. No. and address:

(2) Defendant Samuel Grove
 is employed as corrections officer at Nebraska State Penitentiary
 Additional defendant's employment: Don't Know

II. Previous Civil Actions

A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes No X

(1) Title: (Plaintiff) (v.) (Defendant)

(2) Date filed _____

(3) Court where filed _____
 (specify if the court was state or federal and the level of the court)

(4) Court number and citation _____

(5) Name of judge to whom the case was assigned _____

(6) Basic claim made _____

(7) Date of disposition _____

(8) Disposition _____
 (pending) (on appeal) (resolved)

(9) If decided by the court, state whether for plaintiff or defendant _____

(10) Approximate date of filing _____

(11) Approximate date of judgment _____

For additional cases, provide the above information in the same format on a separate page.

B. Have you begun other cases in state or federal courts relating to the conditions of your treatment while in confinement? Yes ___ No X

III. Grievance Procedure

A. Does your institution have an administrative or grievance procedure? Yes X No ___

B. Did you present the facts relating to your complaint through the administrative or grievance procedure? Yes X No ___

C. What was the result? Matter was being investigated
action will not be discussed with me

D. If you did not file a grievance, state the reasons _____

E. Please attach any responses as exhibits to this complaint.

F. If there is not prisoner grievance procedure at your institution, did you complain to prison authorities? Yes ___ No X

G. If your answer to F is yes,

A. What steps did you take and what was the result? _____

IV. Jurisdiction

A. Is this complaint brought for a violation of your federal constitutional rights by a person employed by the state, county, or municipal government or acting with such government officials? Yes X No ___

If "yes," please state the agency the official(s) is/are employed by or why you believe the defendant(s) was/were acting in conjunction with government

officials: Being state employed Corrections Officer

B. Is this complaint brought for a violation of state or local law? Yes X No _____

If so, please specify (without alleging any supporting facts) the state law(s) you believe was/were violated
Assault

Is/are the defendant(s) residents of the same state as you? Yes X No _____

If not, specify what state _____

V. Statement of Claim:

(State here as briefly as possible the **FACTS** of your case. You must state exactly what each defendant personally did, or failed to do, that resulted in harm to you, and describe the harm. Include the names of other persons involved (for example, other inmates), dates, and places of all events. If you allege related claims, number and set forth each claim in a separate paragraph. Attach an extra sheet, if necessary. Unrelated claims should be raised in a separate civil action. Do not give legal arguments or cite cases or statutes except in Part B below.

A. Crpl Grove said that I threw coffee and hit him with it when actually I dropped my cup off the food hatch spilling the liquids along with dropping my personal cup also. Then he (Crpl Grove.) kicked my food hatch smashing my left hand in it splitting the top of my hand open. Inmate

Bobby Cole 60431 witnessed the whole ordeal as Crpl Grove kicked the hatch repeatedly. It was an accident and unprovoked. I've exhausted my grievance policies and a copy is attached. A picture was taken of my left hand and then medical gave me an ace wrap and ice bag. Since then I have had numbness in my hand and is on medicine for that.

B. State briefly your legal theory or cite appropriate authority: I would think that a money damage is appropriate. I believe \$75,000 against Crpl Samuel Grove and State of Nebraska would be ~~appropriate~~ appropriate. And charges be filed against Samuel Grove.

VI. Relief

A. Do you request money damages? Yes No

If so,

1. Did you lose any money from this incident?
Yes No If so, how much? _____

2. Did you receive a physical injury? Yes No

3. What other harm did you experience from this incident? Nerve damage

4. State the amount of damages claimed \$75,000 physical damage
\$25,000 emotional
B. Do you request a jury trial? Yes No

C. State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I would like the court to grant me the amount of money for physical and emotional damages against said defendants. Also would like to see that Cpl Grove is terminated from Corrections completely with Assault Charges pressed.

VII. Request for Appointment of Counsel

A. Do you want an attorney to represent you in presenting your claim to the court? Yes No

B. Did someone help you in preparing this complaint? Yes No If so, state the person's name (optional)

C. Have you made any efforts to contact a private lawyer to determine if he or she would represent you in this action? Yes No

If so, state the name(s) and address(es) of each lawyer contacted Brad Kalkwarf 321 S Main St. P.O. Box 905 Wilber Ne 68465

If not, state your reasons

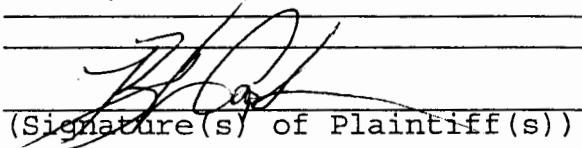
(Note: This court has no funds with which to pay an attorney for handling this type of case. Because of this, appointments are made only in cases where an attorney is greatly needed and the

attorney is willing to take the case without expecting to receive any fee.)

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 29th day of May, 2015.

Brandan Copek


(Signature(s) of Plaintiff(s))

A-13

NSP

CAPEK, BRANDON #72896
2014-11407

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step Two
Central Office Appeal
RESPONSE AND REASONS FOR DECISION REACHED

Inmate Name: CAPEK, BRANDON

Inmate Number: 72896

Date Received: 12-02-2014

Grievance Number: 2014-11407

Subject: Staff

Response:

You contend that Corporal Grove kicked the food hatch causing you physical injury. Staff reports that this matter is being investigated by the appropriate staff. Please be advised any disciplinary action taken against staff will be confidential and not discussed with you.

12-9-14

Director

JX. Hopkins Jr

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM
Step One
CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:
 TYPE OR USE BALL POINT
 PEN. IF MORE SPACE IS
 NEEDED, USE ATTACHMENT
 SHEET IN TRIPPLICATE.

From: Capek Brandan L
 LAST NAME, FIRST, MIDDLE INITIAL

72896
 NO.

CU A13
 FACILITY/HOUSING UNIT

Part A - INMATE REQUEST/CONCERN:

Cpl Grove kicked the food hatch causing physical harm to my left and right hands. He said in a write up that I assaulted him by throwing coffee on him and he kicked my hatch due to my hand being out of the cell. I beat the write up on throwing my coffee on him but found guilty of having my hands out of my cell. I want assault charges pressed on him for the use of excessive force causing bodily harm.

11-17-14

DATE


 SIGNATURE OF REQUESTOR

Part B - RESPONSE AND REASONS FOR DECISION REACHED

I support the response on Informal Grievance Resolution Form #2014-11407. The information regarding staff actions has been forwarded to the Department's Investigative Office for further review.

11/3/14

DATE


 CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
INFORMAL GRIEVANCE RESOLUTION FORM
UNIT STAFFFROM: Capek Brandon L
Last Name, First, Middle Initial72896
NumberNSP/Control Unit
Facility/Housing Unit

PART A: Inmate Request/Concern.

Crpl Grove desided since I didnt put my hand in my foot hole fast enough that he would kick the hatch causing physical harm towards me. I never threatening him or nothing to provoke a cause for physical harm. I want assault charges pressed.

11-12-14

Date

Signature



PART B: Response and Reason(s) for Decision Reached.

THIS INCIDENT HAS BEEN REVIEWED AND APPROPRIATE ACTIONS WILL BE TAKEN. ANY ACTIONS THAT MAY BE IMPLEMENTED AGAINST EMPLOYEES AS A RESULT OF THIS INCIDENT WILL NOT BE DISCUSSED WITH YOU. IF YOU DISAGREE WITH THE RESULTS OF THE DISCIPLINARY HEARING, YOU MAY USE THE ESTABLISHED APPEAL PROCESS.

11-18-14

Date

Signature

NOTE: A copy of this completed *Informal Grievance Resolution Form* must accompany any *Step 1 Institutional Grievance Form*.

RECEIVED

NOV 21 2014



Dave Heineman, Governor ◊ STATE OF NEBRASKA
Michael L. Kenney, Director ◊ DEPARTMENT OF CORRECTIONAL SERVICES

DATE: November 20, 2014

TO: Diane Sabatka-Rine, Warden

THRU: Matt Tracy, Unit Administrator

FROM: Christopher Whitfield, Unit Manager

SUBJECT: Suggested Response – Brandan Copek #72896 Step One Grievance

BACKGROUND:

On 11/12/2014, inmate Brandan Copek #72896 (CU-A-13), filed an Informal Grievance. This grievance was in concern to fact that Corporal Grove kicked the hatch to his cell door shut thus injuring his hand. He stated that it was unprovoked and that he wanted to press assault charges against Corporal Grove.

The initial misconduct report written by Corporal Grove on 11/11/14 stated that inmate Copek had thrown coffee on him hitting him in the head and left shoulder. Inmate Copek had his hands out of the hatch and would not comply with orders to put them back into the cell. Corporal Grove then stated that he kicked the tray hatch just hard enough to convince Copek to put his hands back in. Copek then threatened to kill Corporal Grove before eventually putting his hands back in the cell at the request of Sergeant Hoesing.

Inmate Copek was charged with 2H Use of threatening Language or Gestures/Fighting, 3A Flare of Temper/Minor physical Contact, 2E Disobeying a Direct Order, 3D Swearing, Cursing or use of Abusive Language or Gestures, and 3K Disruption of Authorized Duties. All charges were dropped with the exception of 3K Disruption of Duties which he received time served for 9 meals of alternative food services.

ATTACHMENTS:

Disciplinary Misconduct Reporting Form MR #58YY

Institutional Disciplinary Committee Action Sheet MR #58YY

SOURCE:

UM Christopher Whitfield

SUGGESTED RESPONSE:

I support the response on Informal Grievance Resolution. Your concerns were addressed in the response to the Informal Grievance dated 11-12-14. The incident regarding staff actions has been forwarded to the appropriate departmental personnel for review. I support the findings of the Informal Grievance as any actions implemented against employees as a result of this incident will not be discussed with you.

Christopher Whitfield, Unit Manager

at Department's Investigative Office for further review. 11/21/14

& Scanned/e-mailed

Madsen, Robert

From: Madsen, Robert
Sent: Thursday, November 20, 2014 3:28 PM
To: Hansen, Brad
Subject: Inmate Complaint
Attachments: 2570_001.pdf

Brad,

Please see attached inmate grievance and reports from the incident that leads to the inmate's complaint. Inmate Capek indicates in his grievance that he wants to file assault charges against Corporal Samuel Grove. On November 11, 2014, inmate Capek threw coffee on Cpl. Grove and Cpl. Grove responded by kicking the cell hatch (Control Unit) while inmate Capek's arm was still out of the hatch. Inmate Capek was examined by medical staff and the report indicates that he had a small cut to the back of his left hand. Cpl. Grove currently has a Statement of Charges pending for his actions. If you have any questions, please let me know.

Thank you.

Robert S. Madsen
Deputy Warden
Nebraska State Penitentiary
402-479-3202

Have to get that
through court they
will not give that
to me.

From: dcs.copiers@nebraska.gov [mailto:dcs.copiers@nebraska.gov]
Sent: Thursday, November 20, 2014 3:09 PM
To: Madsen, Robert
Subject: Attached Image

Nebraska Department of Correctional Services
DISCIPLINARY MISCONDUCT REPORTING FORM

M.R.#: 58YY

Time: 08:08 & Date Filed: 11/11/2014

Time: 08:54 & Date Logged: 11/11/2014

Name: CAPEK, BRANDAN L

Inmate Number: 72896

Date: 11/11/2014 and Time: 07:54 report was written

Reporting Employee: Cpl. Grove

RULE INFRACTION: (Ct 1) 2H-USE OF THREATENING LANGUAGE OR GESTURES/FIGHTING, (Ct 2) 3A-FLARE OF TEMPERS/MINOR PHYSICAL CONTACT, (Ct 3) 2E-DISOBEYING AN ORDER, (Ct 4) 3D-SWearing, CURsing, OR USE OF ABUSIVE LANGUAGE OR GESTURES, (Ct 5) 3K-DISRUPTION OF AUTHORIZED DUTIES

EXPLAIN VIOLATION FULLY: (who, what, when, where, how, why, and your action)

I, Cpl. Grove, was assigned to the control unit at Nebraska State Penitentiary on Nov. 11, 2014. At 0700 hrs. I was on A-gallery assisting with the feeding of the breakfast meal. At this time I was at the hatch of cell A-13, in which the sole occupant is inmate Capek, Brandan #72896. I asked Capek what he wanted to drink he stated that he wanted me to put coffee in his cup which he placed on the hatch of his cell. He also stated that he wanted two milks and a juice. I explained that I could not handle his cup to put coffee in it because it was a sanitation issue. I explained that I could put milk in his cup or on his cereal and give him a milk, a juice and a coffee in the food service cups. He insisted that I put coffee in his cup. I responded that I had already explained why I could not do this and gave him one cup each of milk, juice and coffee. I then asked if he wanted milk in his cup. He responded very angrily that he wanted coffee in his cup. I continued on to feed the next inmate. Capek then proceeded to assault me by throwing his cup of hot coffee at me. In the process of doing this Capek knocked his empty personal cup off the hatch of his cell onto the gallery floor. The majority of the coffee hit me in my head and left shoulder. I then went over to his cell to close the hatch so he could not continue to throw items at me. He stuck his left hand out of the hatch and would not allow me to close it. I gave him several directives to pull his hand inside the hatch. He refused. I then kicked the hatch just hard enough to try to convince him to pull his hand inside. He pulled his left hand in and put his right hand out in its place. He then began making threats to me that he was going to kill me. I continued to direct him to pull his hands inside so the hatch could be secured. Sgt. Hoesing came over and attempted to gain compliance from Capek. Capek eventually complied upon Sgt. Hoesing giving him his personal cup back. Nurse John Klone came to the control unit to conduct medical rounds at 0735 hrs. I explained to him what had taken place and suggested he look at Capek if he was willing to be seen. He did so.

Evidence Collected: NO

Where Held:

by:

三

why
not

Cpl. Grove

(Signature of Reporting Employee)

HEARING BEFORE INVESTIGATING OFFICER

Date: 11/13/2014 and Time : 10:06 of Hearing before Investigating Officer.

Number of hours between infraction or discovery and filing: 1.13

Inmate Present: YES

Comment: I didn't throw the cup at him. My cup was on the hatch and I went to grab mine and when I did I didn't grab the handle

Nebraska Department of Correctional Services
DISCIPLINARY MISCONDUCT REPORTING FORM

M.R.#: 58YY

Time: 08:08 & Date Filed: 11/11/2014

Time: 08:54 & Date Logged: 11/11/2014

the handle right. I didn't intentionally throw anything at him at all. The cup landed right outside of my cell and he was standing by the next cell, how did it hit him? He only gave me one directive to pull my hand in then he kicked it and I pulled my hand in. My right hand took the most damage, both of my hands got hit but I had both of them out not just one. That's a lie.

For the purposes of my Disciplinary Committee hearing on this misconduct report:

IDC Representation Requested: YES

Who: Riggle 78532

IDC Witnesses Requested: YES

Who: Cole 60431

IDC Employee Requested: WAIVED

IDC 24Hr Notice of Charges:

24Hr Notice of Hearing:

Appearance Before Committee:

Dismissal Recommended: NO

Investigation Continued: NO

Date: and Time:

Comments and Finding of facts: None

Recommended date of Disciplinary Committee Hearing:

Date: 11/17/2014 and Time : will call

Copy of completed report delivered to inmate:

Date: 11/13/2014 and Time : 10:09

Ask inmate (if applicable): Do you knowingly, intelligently, and voluntarily waive the above indicated rights? Do you affirm that no threats, coercion, or promises have been made to you to obtain your signature? Do you understand that the rights you've waived will not influence the disposition of the Committee?

Inmate's Waiver Response : YES

If your case is heard at Unit Disciplinary Committee (UDC), you have no right to a representative, no right to the reporting employee present at the hearing, no right to request witnesses, no right to receive twenty-four hours notice of the charges, and no right to appeal the decision.



(Signature of Inmate)

Sgt. Goodman



(Signature of Investigating Officer)

Nebraska Department of Correctional Services
INSTITUTIONAL DISCIPLINARY COMMITTEE ACTION SHEET

M.R.#: 58YY

Log Time/Date: 11/11/2014 08:54 AM

Institution: NSP

Name: CAPEK, BRANDAN L

Number : 72896

Hrg. Date: 11/17/2014

& Time: 13:41

CHARGES : (Ct 1) 2H-USE OF THREATENING LANGUAGE OR GESTURES/FIGHTING, (Ct 2) 3A-FLARE OF TEMPERS/MINOR PHYSICAL CONTACT, (Ct 3) 2E-DISOBEYING AN ORDER, (Ct 4) 3D-SWearing, CURSING, OR USE OF ABUSIVE LANGUAGE OR GESTURES, (Ct 5) 3K-DISRUPTION OF AUTHORIZED DUTIES

Date/Amended Charge(s): Waived 24-hour Notice of Amended Charge(s): Initials of
 Inmate:

Continued Hearing: Reason: Continued To:

Interpreter Present: *(This is your 24-hour notice)*

For the purposes of my Disciplinary Committee hearing on this misconduct report:

Representative Requested?: YES Who: Riggle 78532

Representative Present?: YES If not, why?:

Witnesses Requested?: YES Who: Cole 60431

Witness Present?: NO If not, why?: Submitted statement

Reporting Employee: Cpl. Grove Requested: WAIVED Present:

Inmate given 24-hour notice of disciplinary charge(s) : YES Inmate given 24-hour notice of hearing: YES

Appearance Before the Committee:

Ask inmate (if applicable): Do you knowingly, intelligently, and voluntarily waive the above indicated rights? Do you affirm that no threats, coercion, or promises have been made to you to obtain your signature? Do you understand that the rights you've waived will not influence the disposition of the Committee?

Inmate's Waiver Response :

(Signature of Inmate Waiver)

PRESENTATION OF EVIDENCE:

Summary of Inmate's testimony: Capek #72896- I want it to be known that the statement I made before is the same now I did not throw any coffee.

Witness(es) testimony : None

Documentary evidence submitted by the Inmate: None

EVIDENCE RELIED ON TO SUPPORT FINDINGS:

Misconduct Report:# 58YY Date of Misconduct Report: 11/11/2014

Testimony of following persons: Capek #72896

 Written statements, physical evidence, documentary evidence, or other: Inclass, IDC Witness statement by Cole 60431, Memo by Lt. Runge, IR by Sgt Hoesing, OM 201.002.102 Attachment 9 Page 20 and 21

Nebraska Department of Correctional Services
INSTITUTIONAL DISCIPLINARY COMMITTEE ACTION SHEET

M.R.#: 58YY

Log Time/Date: 11/11/2014 08:54 AM

Institution: NSP

Disposition of physical evidence:

Lab Report/State Patrol Report:

Misconduct Report History: NO

Confidential information considered?:

Reason why information is considered to be reliable:

DECISION OF DISCIPLINARY COMMITTEE:

Guilty Count(s): 5

Dismissed Count(s): 1,2,3,4

BASIS FOR COMMITTEE FINDINGS: Committee finds inmate guilty of disruption of authorized duties by placing his hands on the hatch and not immediately complying with staff's directives to put his hands inside the hatch during the morning meal service.

Sanctions Imposed:

CT	Charge	Rest Type	Start Date	End Date	LGT Amt	LGT NR?	Action
5	3K-DISRUPTION OF AUTHORIZED DUTIES	OTHER					9 meals of Alternative food service (Time Served)

Received Room Restriction/Extra Duty Guidelines: NO

Note: These disciplinary sanctions are considered by the Committee to be proportionate to the nature of your offense and to be necessary to deter you and other inmates from committing similar offenses in the future.

IDC Note: Inmate is hereby notified of the right to appeal this decision under Rule 6 within 15 days.



11/17/2014

Inmate Signature/Number

Date

UM Noyola

Chairperson

Member

D.Sabatka-Rine

11/17/2014

Recorded By:

Cpl. Twohig

Warden (or equivalent) Review

Date

Inmate Name Brandon Copek
Inmate Number 72896
Box 2500

Lincoln, NE 68542-2500

NOTICE: This correspondence was mailed from
an institution operated by the
Nebraska Dept. of Correctional Services.
Its contents are unsearched.

RECEIVED

JUN 04 2015

CLERK
U.S. DISTRICT COURT
LINCOLN

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FIRST-CLASS MAIL

06/02/2015

US POSTAGE

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Lincoln Ne 68508